

HUMAN RIGHTS FROM THE GROUND UP: BUILDING THE FIRST LAW SCHOOL LEGAL AID CLINIC IN HAITI

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INTRODUCTION

They stand. They sit. Or, they squat. Rarely, even when desperate for sleep, can they lie down.¹ In dark, cramped, and squalid cells with bare concrete floors and often only a shared bucket as the sanitation facility, they wait.² Most have been convicted of nothing.³ Commonly, they have not been before a judge or seen a lawyer.⁴ Fifty men or more may occupy a single cell

¹ For a discussion of the conditions in the Jérémie Prison, see Kate E. Bloch, *Representation for the Accused: Haiti's Thirst and a Role for Clinical Legal Education*, 14 OR. REV. INT'L L. 430, 434-35 (2012) and Memorandum from Rachel Lopez of Seton Hall Law School on Fact-Finding Concerning Prison Conditions in Jérémie and Recommendations for Reform to Nicole Phillips of Institute for Justice and Democracy in Haiti (April 18, 2012) (on file with the co-authors) (hereinafter "the Lopez Memorandum"). The Lopez Memorandum notes:

The detention facility in Jeremie was originally a private home and was never intended to be a prison. The prison services the entire department, which has 12 towns. Its official capacity is between 60-70 prisoners, but on the day that we visited it housed 264 inmates. In the most populous cell, the official capacity is approximately 10 prisoners, but it currently houses approximately 60 prisoners. Only 82 of the 264 prisoners have been sentenced. The remaining 182 are in pre-trial detention.

Lopez, *supra* note 1, at 1-2. (footnotes omitted). The Lopez Memorandum indicates that the source of the information was an interview with the prison warden. *Id.* at n.1.

² Bloch, *supra* note 1, at 435; Lopez, *supra* note 1, at 1-2.

³ Bloch, *supra* note 1, at 438.

⁴ Bloch, *supra* note 1 at 437-38. The 2015 U.S. State Department report offers an account of the human rights situation with respect to pretrial detention in Haiti in 2015, excerpted in part below:

Prolonged pretrial detention remained a serious problem... Of the approximately 11,200 prison inmates, authorities held an estimated 8,000 (or 72 percent) in pretrial detention. Approximately 72 percent of adult male prisoners and 83 percent of adult female prisoners were in pretrial detention, while 80 percent of male minors and 92 percent of female minors were pretrial detainees. Pretrial detention was significantly more prevalent in Port-au-Prince, where the pretrial detainee population represented approximately 48 percent of the national pretrial detainee prison population. As of September authorities had yet to try an estimated 88 percent of Port-au-Prince's inmates.

Many pretrial detainees had never consulted with an attorney, appeared before a judge, or been given a docket timeline. While statements from prison wardens suggested that the majority of inmates spent between two and five years in pretrial detention, reports indicated that time spent in pretrial detention was much lower and varied by geographic jurisdiction. The average lengths of pretrial detention for inmates in the prisons in Saint-Marc, Fort Liberte, and Cap Haitien were 4.0, 4.2, and 8.6 months, respectively. Prisoners in the National Penitentiary and women's prison spent an average of 15 and 21 months, respectively....

Pervasive and longstanding problems, primarily stemming from a lack of judicial oversight and professionalism, contributed to a large backlog of criminal cases. Judiciary personnel were paid haphazardly, with arrears often running into months, and worked in facilities that often lacked basic supplies. The failure to appoint or re-appoint judges at the expiration of their terms further slowed the functioning of the judiciary and negatively impacted the conditions in the prisons, where thousands of detainees in prolonged pretrial detention waited several months before they could see a judge....

The code of criminal procedure does not clearly assign criminal investigation responsibility, which it divides among police, justices of the peace, prosecutors, and investigating magistrates. As a result authorities often failed to question witnesses, complete investigations, compile complete case files, or conduct autopsies. While the law provides magistrates two months to request additional information from investigators, authorities were not supposed to invoke this delay more than twice for a given case. Magistrates often did not follow this requirement, and investigative judges

that was meant to hold no more than ten.⁵ There, they wait for weeks, months, and perhaps years, front-to-back, side-to-side.⁶ They are the adult male pre-trial detainees of the prison in Jérémie, Haiti, for whom an accusation and arrest can condemn them to an indefinite period of custody in conditions that must violate international conventions on human rights. In commenting on similar conditions in another Haitian prison, the Inter-American Court of Human Rights wrote, “the extreme overcrowding, unhygienic and unsanitary conditions and poor inmate diet at the National Penitentiary did not even approximate the standards set in the United Nations *Standard Minimum Rules for the Treatment of Prisoners*.”⁷

frequently dropped cases or did not return them within the two-month limit. This resulted in extended pretrial detention for numerous detainees. The criminal procedure code also calls for twice-yearly jury trial sessions for offenders of major crimes; however, due to a shortage of active judges, these sessions took place only once a year for a two-week period, further delaying the administration of justice in criminal matters.

Corruption and a lack of judicial oversight also severely hampered the judiciary. Human rights organizations reported that several judicial officials, including judges and court clerks, arbitrarily charged fees to initiate criminal prosecutions, and that judges and prosecutors failed to respond to those who could not afford to pay. There were widespread, credible allegations of unqualified and unprofessional judges who received appointments as political favors. There were also persistent accusations that court deans – who are responsible for assigning cases to judges for investigation and review – at times assigned politically sensitive cases to judges with close ties to figures in the executive and legislative branches. In response human rights organizations often formally requested that the CSPJ [Supreme Council of the Judiciary] investigate the behavior and review the judicial decisions of judiciary officials.

The CSPJ was not always effective in providing judicial accountability and transparency. Many judicial officials also held full-time occupations outside the courts, although the constitution bars judges from holding any other type of employment except teaching....

Authorities generally allowed detainees access to family members after arrest. While authorities generally acknowledged the right to counsel, most detainees could not afford a private attorney. Some departmental bar associations and legal assistance groups provided free counsel to indigents. Some NGO attorneys also provided free services to the indigent, and the initial Ministry of Justice and Public Security budget draft for the year included an allocation for government-provided legal assistance through bar associations. The criminal procedure code does not allow for a functional bail system.

Haiti 2015 Human Rights Report, U.S. DEPARTMENT OF STATE 9-11 (2015), <https://www.state.gov/documents/organization/253233.pdf> [https://perma.cc/8Z3Y-E7ED]. The report also notes recent amelioration in some circumstances:

Improvements: Construction of a new 200-bed prison facility in Cabaret and a 300-bed facility in Fort Liberté continued during the year. A clinic for prisoners suffering from multidrug-resistant tuberculosis opened at the National Penitentiary earlier in the year. The facility also served to fulfill urgent requests from prisons throughout the West Department for laboratory tests and x-rays.

In July the government began a “Coup de Poing” initiative to reduce pretrial detention at the youth and women’s prison and the National Penitentiary. The program brought judicial officials to prisons to hold hearings for prisoners in pretrial detention. At the youth facility, the program resulted in an 18 percent reduction in the number of pretrial detainees after two weeks. At the National Penitentiary, the program operated for two weeks in September and resulted in the release of 91 prisoners who were found to be innocent or had exceeded the maximum sentence prescribed for their crime while awaiting trial.

Id. at 6.

⁵ Bloch, *supra* note 1, at 435.

⁶ Bloch, *supra* note 1, at 435-37.

⁷ *Yvon Neptune v. Haiti*, Merits Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 180, ¶

It is in response to such conditions that the law school in the Grand'Anse Department of Haiti, L'École Supérieure Catholique de Droit de Jérémie (ESCDROJ), is building what we believe to be the first in-house law school legal aid clinic in all of Haiti.⁸ Groupe de Recherche, d'Analyse et d'Assistance Légale d'ESCDROJ (GRAALE).⁹ In this Article, we aim to share the first chapters in the story of the creation of this clinic and to invite advice on the next. Sharing offers an opportunity to embed this narrative in the conversation about the emergence of clinical education globally,¹⁰ to furnish moral support for similar endeavors elsewhere, and perhaps to

137 (May 6, 2008) (quoting an undisputed description of the prison conditions from the Inter-American Commission on Human Rights's application in the case) (footnotes and citations omitted) (alteration in original), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_180_ing.pdf. [https://perma.cc/56B7-9V62]. A growing literature focuses on human rights in Haiti and the work of attorneys, activists, and grassroots organizations in their efforts to enforce those rights and pursue justice. See, e.g., Blaine Bookey, *Enforcing the Right to be Free from Sexual Violence and the Role of Lawyers in Post-Earthquake Haiti*, 14 CUNY L. REV. 255 (2011); Mario Joseph & Nicole Phillips, *Judicial Corruption in Haiti: The Need for Discipline and Civil Society Participation*, 39 HASTINGS INT'L & COMP. L. REV. 183 (2016); Fran Quigley, *HOW HUMAN RIGHTS CAN BUILD HAITI: ACTIVISTS, LAWYERS, AND THE GRASSROOTS CAMPAIGN* (2014); Yifat Susskind, *Many Voices: Combining International Human Rights Advocacy and Grassroots Activism to End Sexual Violence in Haiti*, 14 CUNY L. REV. 339 (2011).

⁸ "Law school in Haiti is theoretical, with no practice classes or clinics." Irwin P. Stotsky & Brian Concannon, Jr., *Democracy and Sustainability in Reconstructing Haiti: A Possibility or Mirage?* 44 U. MIAMI INTER-AM. L. REV. 1, 34 (2012) (citation omitted). We are under the impression that, in recent years, one or more law schools in Haiti may have begun offering opportunities for attorneys to come and work with students in advising clients in limited or drop-in capacities in association with the schools. To our knowledge, however, these opportunities are significantly different from the type of in-house clinical training and start-to-finish student clinical education opportunities proposed for the GRAALE clinic described here. Definitions of what constitutes clinical legal education or a law school clinic may differ. See Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 PENN ST. INT'L L. REV. 421, 422-23 (2004) (acknowledging the debate and offering a six-prong definition). We envision an ESCDROJ clinic where, in conjunction with the law school curriculum and under the direction of clinic staff, the Dean, and other associated faculty and attorney supervisors, students learn theoretical, doctrinal, skills, and professionalism competencies that prepare them for and support them in furnishing supervised, high quality, start-to-finish, in-house legal representation and mediation for indigent members of the local community.

⁹ Translation: ESCDROJ Research, Analysis, and Legal Assistance Group.

¹⁰ See, e.g., Sameer M. Ashar, *Book Review: Frank S. Bloch, ed., The Global Clinical Movement: Educating Lawyers for Social Justice*, 62 J. LEGAL EDUC. 193, 194 (2012) (arguing, *inter alia*, "that making law clinics and law schools more permeable to social movements ought to be a central strategy in the development of justice education both in the United States and abroad"); Brook K. Baker, *Teaching Legal Skills in South Africa: A Transition from Cross-Cultural Collaboration to HIV/AIDS Solidarity*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 145, 148 (2003) (describing first-hand experience teaching research and writing, and in clinic supervision in South Africa, and explaining how these "South African experiences have transformed [the author's] teaching and [the author's] political commitments, activism, and understanding of the world"); Cecily E. Baskar, *Crossing Borders: Creating an American Law Clinic in China*, 19 CLINICAL L. REV. 163 (2012) (evaluating the Center for Cross-Border Advocacy and the early years of clinical education in China); Lisa Bliss, *Lessons Learned from Teaching Clinical Legal Education in Thailand*, 63 J. LEGAL EDUC. 524, 525 (2014) (offering reflections on her experience as a visiting clinical professor in Thailand and work with a legal education-focused NGO); Frank S. Bloch, *Access to Justice and the Global Clinical Movement*, 28 WASH. U. J. LAW & POL'Y 111, 111-12 (2008) (arguing that "an emerging global clinical movement can strengthen... clinical legal education's commitment to access to justice... and increase the level and quality of law-school-based access-to-justice activity worldwide"); Frank S. Bloch & M.R.K. Prasad, *Institutionalizing a Social Justice Mission for Clinical Legal Education: Cross-National Currents from India and the United States*, 13 CLINICAL L. REV. 165, 167 (2006) (analyzing the "opportunity in India to... institutionaliz[e] social justice-based clinical legal education at all Indian law schools"); Frank S. Bloch, ed., *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE* (2011) (presenting accounts and analyses of clinical and social justice education from countries around the globe); Daniel Bonilla, *Legal*

Clinics in the Global North and South: Between Equality and Subordination—An Essay, 16 YALE HUMAN RTS. & DEV. L. J. 1, 1 n.1 (2013) (defining in the article “Global South and Global North [not] as geographic terms” but as “concepts related to the unequal distribution of political, economic, military and cultural power among countries” and offering a powerful critique of the potentially common power inequalities in partnerships between clinicians in the Global South and North when they collaborate on clinical work); Andreas Bücker & William A. Woodruff, *The Bologna Process and German Legal Education: Developing Professional Competence Through Clinical Experience*, 9 GERMAN L.J. 575 (2008) (exploring the possibility of clinical legal education as an option for German law schools); John M. Burman, *The Role of Clinical Legal Education in Developing the Rule of Law in Russia*, 2 WYO. L. REV. 89 (2002) (exploring issues of the rule of law and a role for clinical legal education in Russia); Yanmin Cai, *Global Clinical Legal Education and International Partnerships: A Chinese Legal Educator’s Perspective*, 26 MD. J. INT’L L. 159, 160 (2011) (arguing that “[g]enerally speaking, clinical legal education has gone global. It also has become more pervasive, making significant inroads in China over the past decade.”) (footnotes omitted); Lauren Carasik, *Think Glocal, Act Glocal: The Praxis of Social Justice Lawyering in the Global Era*, 15 CLINICAL L. REV. 55, 57 (2008) (“suggest[ing] a clinical model that integrates social change theory and anti-poverty work in the global era” to explore a proposal for a U.S.-Chinese partnership to create a labor-rights clinic in China); Stacy Caplow, *Clinical Legal Education in Hong Kong: A Time to Move Forward*, 36 HONG KONG L. J. 229 (2006) (exploring the possibility of implementing clinical legal education in Hong Kong); Arturo Carrillo & Nicolás Espejo Yaksic, *Re-Imagining the Human Rights Law Clinic*, 26 MD. J. INT’L L. 80 (2011) (exploring the role for a human rights law clinic in the U.S., using, in particular, insights from clinical experience in Latin America); David F. Chavkin, *Practicing/Thinking Clinical Education from Within the Palestinian-Israeli Conflict: Lessons from the Al-Quds Human Rights Clinic*, 18 NO. 1 HUM. RTS. BRIEF 14 (2008) (describing the creation and approach of the Al-Quds Human Rights Clinic at the Al-Quds University Faculty of Law in Palestine); Yvonne Dausab, *Access to Justice: The Use of International Law Clinics to Advance the Case for Vulnerable Members of Society*, 26 MD. J. INT’L L. 8 (2011) (discussing the challenges and rewards of working in the University of Namibia Legal Aid Clinic); Lawrence Donnelly, *Clinical Legal Education in Ireland: Some Transatlantic Musings*, 4 PHOENIX L. REV. 7, 9 (2010) (“consider[ing] the impediments to clinical legal education becoming a central part of the student experience [in Ireland] as it is in the United States... examin[ing] progress in the field to date, and ponder[ing] what the future may hold”); Philip M. Genty, *Overcoming Cultural Blindness in International Clinical Collaboration: The Divide Between Civil and Common Law Cultures and Its Implications for Clinical Education*, 15 CLINICAL LAW REVIEW 131, 134 (2008) (opining that “we U.S. teachers have neither thought carefully enough about the kind of interactive teaching that is most appropriate for the perspectives, orientation and needs of our civil law colleagues nor engaged these colleagues in a conversation about how best to do this... [and proposing] a framework for undertaking this collaborative task”); Thomas F. Geraghty & Emmanuel K. Quansah, *African Legal Education: A Missed Opportunity and Suggestions for Change*, 5 LOY. U. CHI. INT’L L. REV. 87, 88 (2007) (“focus[ing] on the state of legal education in sub-Saharan Africa, excluding South Africa”); Patricia Goedde, *Globalized Legal Education, Human Rights Lawyering, and Institutional Reform: The Case of a Refugee Law Clinic in South Korea*, 20 CLINICAL L. REV. 355, 356 (2014) (“provid[ing] a first-hand description of the development of the Refugee Law Clinic at Sungkyunkwan Law School in Seoul”); Lawrence M. Grosberg, *Clinical Legal Education in Russia: “Da and Nyet,”* 7 CLINICAL L. REV. 469 (2001) (evaluating the state of clinical legal education in Russia); Priya S. Gupta, Kudrat Dev, Meher Dev, & Kirti Rana, *How Clinical Education Builds Bridges with Villages for a Global Law School in India*, 63 J. LEGAL EDUC. 512 (2014) (discussing the community building work of a law school clinic in India); Haider Ala Hamoudi, *Toward a Rule of Law Society in Iraq: Introducing Clinical Legal Education Into Iraqi Law Schools*, 23 BERKELEY J. INT’L L. 112, 116 (2005) (recommending the “careful and sustained development of experientially-based programs that can, in the course of a year or two, be developed into a live clinic” for law schools in Iraq); Grady Jessup, *Symbiotic Relationships: Clinical Methodology—Fostering New Paradigms in African Legal Education*, 8 CLINICAL L. REV. 377, 377 (2002) (“explor[ing] an approach to Clinical Legal Education in the African context that is designed to preserve the general benefits that Clinical Legal Education provides for students and clients, whether American or African, but also responds to the unique needs found by law students and lawyers in the African setting”); Peter Joy, Shigeo Miyagawa, Takao Suami, & Charles D. Weisselberg, *Building Clinical Legal Programs in a Country Without a Tradition of Graduate Legal Professional Education: Japan Educational Reform as a Case Study*, 13 CLINICAL L. REV. 417, 419 (2006) (“examin[ing] the roles of the new professional law schools – focusing on clinical legal education – within the broader context of the overall reforms of the Japanese justice system”); Mao Ling, *Clinical Legal Education and the Reform of the Higher Legal Education System in China*, 30 FORDHAM INT’L L.J. 421, 421-22 (2007)

(“suggest[ing] ways to reform China’s higher legal education system, including clinical legal education”); Xiaobing Liu, *Clinical Legal Education in China and the Issue of Locus Standi in Criminal Defense*, 23 WILLAMETTE J. INT’L L. & DISP. RESOL. 93 (2015) (exploring China’s prohibition on law students appearing in court to represent clients in criminal defense contexts and arguing for the lifting of that prohibition); Ana Cecilia Mac Lean, *Legal Education in Peru: Are We Ready for Integration and Globalization?*, 19 L. & BUS. REV. AM. 201 (2013) (discussing law school clinics in Peru); Nisreen Mahasneh & Kimberly Thomas, *Learning from the Unique and Common Challenges: Clinical Legal Education in Jordan*, 5 BERK. J. MIDDLE E. & ISLAMIC L. 1, 2 (2012) (“analyz[ing] and assess[ing] the challenges facing the implementation of clinical legal education in Jordan”); Peggy Maisel, *Expanding and Sustaining Clinical Legal Education in Developing Countries: What We Can Learn from South Africa*, 30 FORDHAM INT’L L.J. 374, 377 (2007) (“review[ing] the development of clinical education in South Africa and the valuable lessons such an analysis provides for those seeking to promote clinical education elsewhere”); Peggy Maisel, *The Role of U.S. Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration*, 14 CLINICAL L. REV. 465, 471 (2008) (offering, *inter alia*, “considerable guidance about how to initiate and plan a successful project, mainly the need to do so collaboratively with academics in the host country”); Serge A. Martinez, *Law Clinics in Taiwan: Can Clinical Legal Education Succeed in this Civil Law Jurisdiction with an Undergraduate Legal Education System?*, 7 NAT’L TAIWAN U. L. REV. 343, 346 (2012) (“consider[ing] whether and how [clinical legal education] can work in a country like Taiwan, with its civil code, its tradition of undergraduate legal education and its limited tradition of practical education in law school.”); James C. May, *Creating Russia’s First Law School Legal Clinic*, 23 AUG VT. B.J. & L. DIG. 43 (1997) (describing the founding of Russian law school civil clinic); Elliott S. Milstein, *Experiential Education and the Rule of Law: Teaching Values Through Clinical Education in China*, 22 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 55, 55 (2009) (discussing the “role that clinical education can play in advancing the rule of law in China”); Note, *Adopting and Adapting: Clinical Legal Education and Access to Justice in China*, 120 HARV. L. REV. 2134 (2007) (exploring the role of law school clinics in China with respect to improving access to justice); Héctor Olásolo, *Legal Clinics in Continental Western Europe: The Approach of the Utrecht Legal Clinic on Conflict, Human Rights, and International Justice*, 104 AM. SOC’Y INT’L L. PROC. 98 (2011) (discussing the Utrecht Legal Clinic); Aliza G. Organick, *Creating a Tribal Law Practice Clinic in Kansas: Carving the Peg to Fit the Hole*, 82 N.D. L. REV. 849 (2006) (describing the creation of a Tribal Court Practice Clinic); Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 YALE HUM. RTS. & DEV. L.J. 117, 150 (2005) (investigating the role of clinical legal education as a tool for social justice and arguing that “individual cases and client interactions can become the means by which law may finally trickle down to the average citizen and ignite the engines of lasting social reform”); Michael Ramsden & Luke Marsh, *Using Clinical Legal Education to Address an Unmet Need: A Hong Kong Perspective*, 63 J. LEGAL EDUC. 447 (2014) (discussing recommendations for clinical legal education in Hong Kong and implementation of Refugee Assistance Clinic at the Chinese University of Hong Kong); Stephen A. Rosenbaum, *The Legal Clinic is More Than a Sign on the Door: Transforming Law School Education in Revolutionary Egypt*, 5 BERK. J. MIDDLE E. & ISLAMIC L. 39 (2012) (describing goals and potential challenges of creating clinical education opportunities at Egyptian law schools); Nicholas J. Schroeck, *A Changing Environment in China: The Ripe Opportunity for Environmental Law Clinics to Increase Public Participation and to Shape Law and Policy*, 18 VT. J. ENVTL. L. 1 (2016) (suggesting partnership opportunities for U.S. and Chinese law school environmental clinics in light of changing environmental law in China); Kandis Scott, *Additional Thoughts on Romanian Clinical Legal Education: A Comment on Uphoff’s “Confessions of a Clinician Educator,”* 6 CLINICAL L. REV. 531, 531 (2000) (largely agreeing with Professor Uphoff’s description and proposing “to go outside the law school and use continuing legal education programs for recent graduates to teach lawyering by means of clinical methodology”); James Silk, *From Empire to Empathy? Clinical Collaborations Between the Global North and the Global South—An Essay in Conversation with Daniel Bonilla*, 16 YALE HUM. RTS. & DEV. L.J. 41 (2013) (responding to criticisms of clinic collaborations raised by Professor Daniel Bonilla); Marta Skrodzka, Joy Chia, Eddie Bruce-Jones, *The Next Step Forward: The Development of Clinical Legal Education in Poland through a Clinical Pilot Program in Bialystok*, 2 COLUM. J. E. EUR. L. 56, 60 (2008) (describing proposal that “seeks to improve upon the existing foundation that Polish universities have already built by creating a model that will allow clinics to maximize simultaneously their educational and social goals”); Gemma Smyth & Maggie Liddle, *Lulling Ourselves into a False Sense of Competence: Learning Outcomes and Clinical Legal Education in Canada, the United States and Australia*, 6 CAN. LEGAL EDUC. ANN. REV. 15, 17 (2012) (“analyz[ing] three approaches to outcomes-based legal education through the lens of clinical legal education”); Rodney J. Uphoff, *Why In-House Live Client Clinics Won’t Work in Romania: Confessions of a Clinician Educator*, 6 CLINICAL L.

help others make more informed choices and avoid some potential missteps along the way. It represents an opportunity to recognize and celebrate progress, as well as to try to discern and analyze challenges that lie ahead along the long road yet to be traveled. It also embodies an invitation to the clinical community to join in a dialogue to help shepherd this fledgling clinic into the chapters yet to be written.¹¹ Part I focuses on the conceptual origins and initial challenges confronting the idea of the clinic. Part II describes resolved and unresolved challenges of physical location, design, and fundraising. Part III transitions to challenges of implementation, a number of which remain to be plumbed.

I. CLINIC ORIGINS

GRAALE – which was born of scarcity and need – has been in the planning process for over eight years. As the Dean of ESCDROJ, Dr. Jomanas Eustache, explained in 2008:

ESCDROJ hopes to start a law clinic in order to provide both clinical training for our students and assistance to those in our community. . . who need representation. Currently, after passing a pre-m[é]moir[e] at the completion of their second year, students may represent individuals before the local court. However, by having a clinic, we could more effectively train our students in a manner that combines advocacy with a strong commitment to serve those who cannot afford justice. Students would then have the necessary tools to sharpen their legal advocacy skills. The need is great because these kinds of clinical training opportunities do not currently exist in Haiti.¹²

REV. 315, 315 (1999) (arguing that “[g]iven the existing structure of Romanian education, the nature of the Romanian system, and the limited resources available to Romanian law schools, pedagogically sound in-house live client clinics are not feasible.”); Richard J. Wilson, *Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South*, 8 CLINICAL L. REV. 515, 516-17 (2002) (“providing empirical and anecdotal data on the history and current operation of the in-house, live-client clinical legal education programs at three law schools in Chile”) (hereinafter *Three Law School Clinics in Chile*); Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 PENN ST. INT’L L. REV. 421, 422 (2004) (“provid[ing] an overview of the development of clinical legal education outside of the United States”) (hereinafter *Training for Justice*); Richard J. Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education*, 10 GERMAN L.J. 823 (2009) (critiquing the perceived reluctance in Western Europe toward adopting clinical legal education approaches) (hereinafter *Western Europe*); Leah Wortham, *Aiding Clinical Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively*, 12 CLINICAL L. REV. 615 (2006) (providing, *inter alia*, current guidance on developing clinical legal education globally as well as a discussion of the Law and Development Movement).

¹¹ We welcome your advice, thoughts, and feedback, and ask that you contact us at co-author Kate Bloch’s email address: blochk@uchastings.edu. For an informative resource on clinic design, see Phillip G. Schrag, *Constructing a Clinic*, 3 CLINICAL L. REV. 175, 177 (1996). Professor Schrag specifically intends that his article be of use to those designing clinics outside the U.S.

¹² Jomanas Eustache, *The Importance of Teaching Law and the Reinforcement of the Judiciary System in Haiti*, 32 HASTINGS INT’L & COMP. L. REV. 601, 606-607 (2009) (footnote omitted). For a discussion of possible opportunities for students to work with lawyers to advise clients in connection with their law schools in Haiti, see also *supra* note 8.

A. Clinical Legal Education as an Option

To begin addressing the dire need for legal representation and to provide important training for aspiring lawyers, as in a number of nations around the world,¹³ legal educators at ESCDROJ began considering clinical education. Law school in Haiti, as is the case in many countries, consists of a four-year undergraduate degree program.¹⁴ It generally focuses on theory and doctrine and does not emphasize practice or application opportunities.¹⁵ Consequently, students can graduate without any appreciable exposure to professional competencies necessary to function successfully as a practicing attorney in the Haitian justice system. A “stage,” or apprenticeship in legal practice, is required post-law school in order to join the bar. However, due to limited financial resources, among other obstacles, many students never begin or complete a stage, and even those who do may not be exposed to human rights representation or representation of indigent clients.

The scarcity of professional competencies training and the dire need for local pro bono legal representation, as demonstrated by the conditions in the Jérémie Prison described above, coalesced more than eight years ago to trigger the conceptual foundations of GRAALE. The vision and immediate impetus for clinical education at ESCDROJ emerged from the experiences of co-author Roxane Edmond-Dimanche. Having completed her second year of law school, and having successfully passed her pre-mémoire, she became eligible to represent clients in the criminal justice system and was invited to provide representation for clients before the court.¹⁶ Her early forays into the role of defense counsel underscored the dearth of law school preparation for her role.

As a result of the traditional law school focus on doctrine and theory, she lacked an adequate understanding of court protocol and requirements. This included how to handle documents and physical evidence (which, in her first case, included bloody clothing). Although students were, and still are, encouraged to sit in and observe courtroom proceedings, many have employment that occupies them during the day. Even if they were able to observe court, it would likely be challenging to understand the formal procedures without mentoring and explanation during the process.

¹³ See e.g., Martinez, *supra* note 10, at 348 (“the two major responsibilities of clinics: teaching students effectively and providing high-quality client representation”). There are, of course, other roles for clinics. See e.g., Burman, *supra* note 10, at 115 (“In addition to the twin objectives of American clinical education, providing representation to indigent persons and training law students, law school clinics in Russia have a third important role to play. Properly trained and supervised law students in clinical programs can influence the legal system, in general, by elevating the level of practice in Russian courts. They can also assist in monitoring the performance of courts in promoting and protecting human rights.”).

¹⁴ For example, Ms. Bloch taught as a visitor at the Leiden University Law School in the Netherlands, which consists of a four-year undergraduate degree program.

¹⁵ The lack of practical application courses is also not unique to Haiti. See, e.g., Bruce A. Lasky and M.R.K. Prasad, *The Clinical Movement in Southeast Asia and India: A Comparative Perspective and Lessons to be Learned*, 37-38, in THE GLOBAL CLINICAL MOVEMENT (2011) (“In Southeast Asian law schools... courses on skills and practice are frequently nonexistent.”); Rosenbaum, *supra* note 10, at 56 (“Law school classes in Egypt are almost exclusively devoted to theory, delivered lecture style, often unamplified in a large and overflowing hall, with minimal to no student interaction or opportunities for practical training.” (footnote omitted)). Subsequent to graduation from law school, and after a graduate has written and defended a mémoire, admission to practice in Haiti does contemplate an apprenticeship of one to two years in a private or government law office.

¹⁶ A member of the local bar was required to supervise when Ms. Edmond-Dimanche appeared in court.

These experiences spurred a recognition that a law school educational environment that provided experiential and practice-based training could have better prepared Ms. Edmond-Dimanche and could better prepare other law students to serve effectively as defense counsel. This recognition inspired her vision for a law school clinic at ESCDROJ. With her graduation from law school and the support of Dean Eustache, she embarked on gathering information. As she came to understand, no law school in Haiti had such a clinical program.

Without in-country models of clinical legal education, faculty and graduates of ESCDROJ turned to examples abroad, calling upon their collaborations with partner law schools outside Haiti to augment knowledge in the ESCDROJ community about clinical legal education. That the impetus to look externally stems from Haitian educators and law school graduates may reduce concerns about imperialist external imposition of foreign approaches and values. Nonetheless, in an environment of very constrained economic resources, a condition that characterizes much of life in Haiti,¹⁷ and one in which experience designing practical training during law school has also been limited, external support and programs that provide free resources can pose a risk of unexpected influence.¹⁸ The directions for and decisions about GRAALE must rest with Haitian legal educators to ensure that the clinic provides training in professional competencies that are culturally appropriate and relevant to legal practitioners in Haiti. The non-Haitian colleagues involved in the launch of GRAALE need to remain consistently conscious of the potential of exerting unanticipated influence on decision making, and Haitian colleagues need to feel free to remind everyone when directions and decisions are not being spearheaded by them. For example, in Haiti's civil law system, plea bargains (or negotiated settlements) as they exist in the U.S. between prosecution and defense counsel do not constitute a relevant component of the criminal justice system. Thus, absent a change in the codes and/or legal culture, practical training in that type of negotiation would probably not be a useful addition to the curriculum.¹⁹ In contrast, without plea bargaining, case resolution may require a trial, and oral advocacy training could be of significant value.²⁰

¹⁷ As a result of a complex set of dynamics, which exceed the scope of this Article, Haiti is the most economically impoverished nation in the Western Hemisphere. *The World Factbook, Haiti: Economy*, CENT. INTELLIGENCE AGENCY, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> [<https://perma.cc/P538-PSGD>] (stating Haiti is "[c]urrently the poorest country in the Western Hemisphere, with 80% of the population living under the poverty line and 54% in abject poverty").

¹⁸ Professor Bonilla explores a range of dynamics that may render unequal the partnership between clinicians at a law school in the "Global North" and one in the "Global South" as well as approaches to enable the partners to address and attempt to remedy those inequalities. See Bonilla, *supra* note 10.

¹⁹ This is not to suggest that just because a particular skill has not played a substantial role in Haitian practice, the possibility of teaching it should be immediately discounted. Consider fact investigation, a skill not necessarily traditionally taught in Haitian law schools. Haiti's civil law system, like a number of other such systems, often delegates the primary fact investigation of a criminal allegation to an investigating judge (and sometimes to other law enforcement personnel or the prosecutor). See *supra* note 4. The investigating judge or other individual is then tasked with developing a dossier on the case, often through interviews of witnesses and the gathering of relevant documents. The dossier (or at least a portion of it) can then be made available to the prosecution and defense counsel (assuming the defendant is represented). Historically, counsel did not engage in extensive investigation of their own. In recent years, however, interest has grown in the value of fact investigation conducted independently by counsel. Consequently, fact investigation, although not traditionally taught in Haitian law schools, may be a skill worthy of including as part of the practical skills training in Haitian law schools.

²⁰ Cross-cultural collaborations may also reveal opportunities for rethinking existing procedures, including possible legislative reforms, in each of the jurisdictions whose cultural norms are sources of reference.

Exploration about clinical training by members of the ESCDROJ community has taken a variety of forms. For example, at ESCDROJ's request, partner law schools have engaged in clinical simulation exercises in Haiti at the law school, often collaboratively developing original materials or specialized variations of existing materials to conduct the simulations.²¹ These exercises have ranged from fact investigation to client interviewing to oral advocacy and mediation simulations.²² For instance, in the semester following Dean Eustache's visit to UC Hastings where he spoke about ESCDROJ's desire to create a law school clinic, a clinical exercise engaged ESCDROJ students in a multi-evening criminal justice simulation. This exercise involved students as lawyers in small groups conducting initial and follow-up client interviews. A 2011 visit brought a similar exercise, but with a different fact pattern, and one that offered an added focus on the skill of fact investigation. For this simulation, student representatives visited the location where the eye-witness claimed to have seen the alleged crime, only to discover that the scene did not comport with the eye-witness's account. In other sessions, partner schools have engaged ESCDROJ students in human rights and mediation exercises.²³ These introductory experiential opportunities, where guest faculty and students work with the approximately 150 ESCDROJ students, furnish a taste of practical skills, but they are not substitutes for curricular integration of professional competencies training into courses or for clinical experience in Haitian courts. Such partner workshops provide only brief exposures to lawyering competencies, often in relatively larger group settings, and, even with diligent research and attention to detail, they do not adequately replicate the richness and complexity of the experience of a Haitian lawyer representing real clients in Haitian courts.

Supplementing brief introductory clinical simulations, both co-founders of GRAALE, Ms. Edmond-Dimanche and Ms. Gabrielle Georges-Paul, have, *inter alia*, studied clinical education at U.S. law schools in periods ranging from two weeks to four months.²⁴ Both also participated in the Global Alliance for Justice Education Conference in Valencia, Spain in 2012.²⁵

²¹ See e.g., Bloch, *supra* note 1. ESCDROJ has partnered with several law schools in the U.S., including Catholic University of America School of Law, Seton Hall Law School, and U.C. Hastings College of the Law (Hastings to Haiti Partnership).

²² For example, client interviewing was the focus of a school-wide criminal justice simulation in 2009. Fact investigation, along with client interviewing, served as the basic skills at the heart of a 2011 criminal justice simulation. See Bloch, *supra* note 1. 2012 brought an oral advocacy exercise based on human rights conducted by Seton Hall Law School. 2013 brought a simulation on mediation. 2014 offered a client interviewing-based simulation on legal ethics.

²³ *Id.*

²⁴ Each director attended a portion of the class component of the Criminal Practice Clinic at the University of California Hastings College of the Law. In addition, Ms. Edmond-Dimanche studied for four months with Catholic University of America School of Law and Georgetown University Law Center, working with Professors Sandy Ogilvy, Abbe Smith, and John Copacino.

²⁵ The Global Alliance for Justice Education (GAJE) is an international organization that supports legal educators in developing clinical and other programs for promoting justice around the world. It sponsors a biennial conference where educators gather to discuss justice education, clinical teaching, and the creation and development of legal clinics. Ms. Edmond-Dimanche, along with Gabrielle Georges-Paul, and Margaret (Peggy) Maisel participated in the GAJE conference in Valencia in 2012. Roxane Dimanche et al., "Clinic from Catastrophe: Justice Education in Haiti," Program Abstract, GLOBAL ALLIANCE FOR JUSTICE EDUCATION, <https://www.gaje.org/abstract-roxane/> [<https://perma.cc/52EW-M7XV>]. Based on further progress towards the launch of GRAALE and work with Ms. Edmond-Dimanche in particular, Ms. Bloch gave a presentation at the 2015 GAJE conference in Eskişehir, Turkey, exploring "the possibility of Haiti's first law school clinic offering a venue to focus on systemic and professional integrity to help address" concerns about corruption in the Haitian justice system. See Kate Bloch, "Haiti's First Law School Clinic: Proposing A Venue To Help Address Rule Of Law And Integrity Concerns," GLOBAL ALLIANCE FOR JUSTICE EDUCATION

This ongoing exploration process is serving to enable those responsible for the development and management of GRAALE to evaluate what might and might not be informative for this new endeavor – one that must be responsive to local needs and Haitian experience and practice.²⁶

B. Choosing the Type of Practice: Three Domains of Service

With needed funding largely unsecured, but with the green light from Dean Eustache and the information gathering phase well underway, the next step involved selecting the type of practice in which the clinic would engage. Three practice domains in particular respond to the larger goals of the clinic – criminal defense of pre-trial detainees, representation of sexual assault victims, and mediation.

As indicated above, Jérémie has a pressing need for representation of indigent pre-trial detainees in the local prison. This need motivates the founding of the clinic and concurrently provides a primary service area for its work: criminal justice and human rights representation. Providing this service means creating a law school legal aid office and all that project will likely entail, from conflicts checks, to case management, to client interviewing and counseling, to courtroom skills.

Furnishing representation in criminal cases addresses an urgent need, but not the only pressing legal need of the local population. Concerns about gender-based violence against women in Haiti and a strong women's movement that has organized survivors to pursue their rights motivates the second domain of service for the clinic, representation of victims of sexual violence.²⁷ In Haiti's civil law system, lawyers for the victims of criminal acts can participate in the criminal process and pursue the possibility of financial redress through the criminal trial. For victims of sexual assault, if a judgment is pronounced and can be enforced, legal assistance might someday come to translate into the payment of court-ordered damages by the defendant to a sexual assault survivor.²⁸ Even if financial recompense does not result, representation may, nonetheless, offer a victim meaningful participation in seeking justice.

With detainees accused of diverse crimes as a first group of clients, there could, however, be potential conflict-of-interest concerns with representing victims of sexual assault. Some indigent incarcerated pre-trial detainees likely face sexual assault charges. The clinic could not represent both the alleged perpetrator and the alleged victim in any particular case. To enhance the likelihood that clinic staff would be available and conflict-free to represent sexual assault victims, the clinic plans to adopt a blanket policy not to represent pre-trial detainees accused of sexual assault. This approach minimizes the likelihood of direct conflict and increases the likelihood that the victim of a criminal sexual assault will find representation through the clinic. Unfortunately, it also likely leaves those indigent individuals in the Grand'Anse Department who are accused of sexual assault offenses without representation.²⁹

(2015), <https://www.gaje.org/8th-worldwide-conference/session-abstracts/?id=5024> [<https://perma.cc/BM78-5CW7>].

²⁶ In an ideal world, not constrained by limited resources, the founders of GRAALE might also visit clinical education programs in other countries around the world to gather ideas and compare and contrast approaches.

²⁷ For a discussion of gender-based violence in Haiti, see, e.g., Bookey, *supra* note 7, at 260-63.

²⁸ Whether financial remuneration would actually be ordered and enforced to provide financial assistance is a challenging matter. However, the possibility of such financial recompense does exist in Haitian law. See Kate E. Bloch & Roxane Edmond-Dimanche, *The Rule of Law & Ethical Integrity: Does Haiti Need a Code of Legal Ethics?* 37 U. HAWAII L. REV. 1, 34-35 (2015).

²⁹ Launching the clinic, however, could result in training for students who ultimately become lawyers and represent individuals accused of sexual violence, thus providing representation for individuals whom the clinic is not able

The clinic also hopes to help address conflicts in the community before individuals resort to police intervention. Through mediation services, community members may find resolutions to disputes before the situation escalates into the court system. With pre-trial detainee representation, victim representation, and mediation, the clinic has an ambitious scope and embodies the hope for much change. Each domain should supply engaging and meaningful work for both students and staff in the clinic and critical representation for clients as well as mediation services for community members in need. This first chapter, the “why” of the law school clinic, and, to a substantial extent, its foundational goals, thus rest on addressing critical needs for service in three domains – criminal defense, advocacy for victims of sexual assault, and mediation – and furnishing previously limited or unavailable practical educational opportunities for law students.

II. CLINIC LOCATION, DESIGN, BREAKING GROUND, AND FUNDRAISING

Having addressed the “what” and “why” and having decided that the possibility of a clinic offered much promise, pragmatic considerations of “where” and “how” rose to the fore. Where could such a clinic be housed? How much room would it need? What configuration would work for client interviews and teaching goals? These are challenging questions for any new clinic, even when supported by a reasonable budget. But efforts to launch GRAALE began with no funding at all, an extraordinarily challenging parameter.

A. Location

Without independent means to pay rent, the founders turned first to existing space for which no additional funding would be needed, namely space within the law school. Space constraints and location considerations are important issues at most, if not all, law schools, but they proved particularly challenging for ESCDROJ. The law school does not have exclusive control over the space in which it conducts classes; it shares a facility with a nursing program. Nursing program classes meet during the day, until 5:00 p.m. Law school classes begin at 5:30 p.m. Not only is it a time-shared space, but the shared facility is a relatively small one. It consists primarily of approximately five classrooms, a multi-purpose room used as an eating area, a one-room shared library, one room available for all faculty work, two small offices (one for the nursing school and one for the law school), restrooms, and a space open to the outdoors on two sides that is used for gatherings of the full student body. Supporters of the clinic scoured the square footage for possible alcoves or corners of offices in which to locate the clinic. After careful exploration of various possibilities in the shared space, between the limited square footage and the fact that the law school does not have exclusive use of the building, locating the clinic within the shared facility turned out not to be possible.³⁰

Supporters of the clinic then combed local downtown buildings for options. Two options emerged. The first offered a pleasant and functional space, but, with an annual rent equivalent to \$6,000 U.S., it was far beyond the clinic’s means. The second, which would have been available at minimal to no cost,³¹ was located within walking distance of a lower-level court, but was quite

to represent.

³⁰ Subsequent to the obtaining of space on Dr. Eustache’s property and the donation of the containers to hold the clinic, *see infra*, the law school embarked on building a library space on the roof of the existing shared facility.

³¹ The Haitian Health Foundation (HHF), the non-profit organization for which Ms. Edmond-Dimanche works, generously volunteered the use of the mill apartments.

noisy. It sat on the second floor of a working mill that ran Monday through Saturday. Concerns about the noise persuaded clinic supporters to keep looking for a home for the clinic.

As a result, those in the hunt for appropriate space did not find a suitable location in downtown Jérémie. By the fall of 2012, discouraged advocates for clinical education at ESCDROJ began to question whether a clinic would be feasible. But the clinic endeavor involves the resilience of genuine believers in the value and importance of the project.³² When progress had stalled, a brainstorming meeting held in Dr. Eustache's dining room in October of 2012 brought an innovative new possibility to light. Ms. Paul, an ESCDROJ graduate and co-founder of its proposed clinic, was working for MINUSTAH, the UN peacekeeping/stabilization effort in Haiti. She recalled that the UN had a surplus of pre-fabricated buildings; maybe the UN would see the value of the clinic and consider donating one or two of them. Nevertheless, the buildings would need a geographic location. All the other possibilities explored earlier had their geographic existence already determined. Moreover, just as the clinic lacked funding to pay rent, it also lacked funding to buy land. Having a destination for the buildings might also be an important consideration in the UN decision of whether to donate them. With this new option and corresponding need for land on the table, Dr. Eustache kindly volunteered space on his own land for at least a temporary home for the structures.

Letter drafting and in-person conversations began with UN representatives. Ms. Paul and Ms. Edmond-Dimanche led the campaign. Over the course of months, with the need for many signatures, approval was ultimately secured for the UN to donate the pre-fabricated buildings.

B. Design

Pre-fabricated buildings are intended to house offices and people and serve as work space, but in an earthquake- and hurricane-prone country, they would still need anchoring in the land and some attention to configuration. The wisdom of an architect, preferably a volunteer who would create designs free of charge, would be critical to the success of the project. In flew Tom Zook, a practicing architect who served as a Critic at Yale. After a visit to Dr. Eustache's property, and a trip to the UN facility in Jérémie to view pre-fabricated buildings similar to those that were set for donation, Mr. Zook circulated drawings of the two anticipated pre-fabricated buildings. We then awaited the arrival of the buildings. As in many facets of a construction project, there were delays and more delays. But, finally, in February of 2014, the unloading of sizeable structures onto Dr. Eustache's property took place. And, instead of two structures, there were three of them.

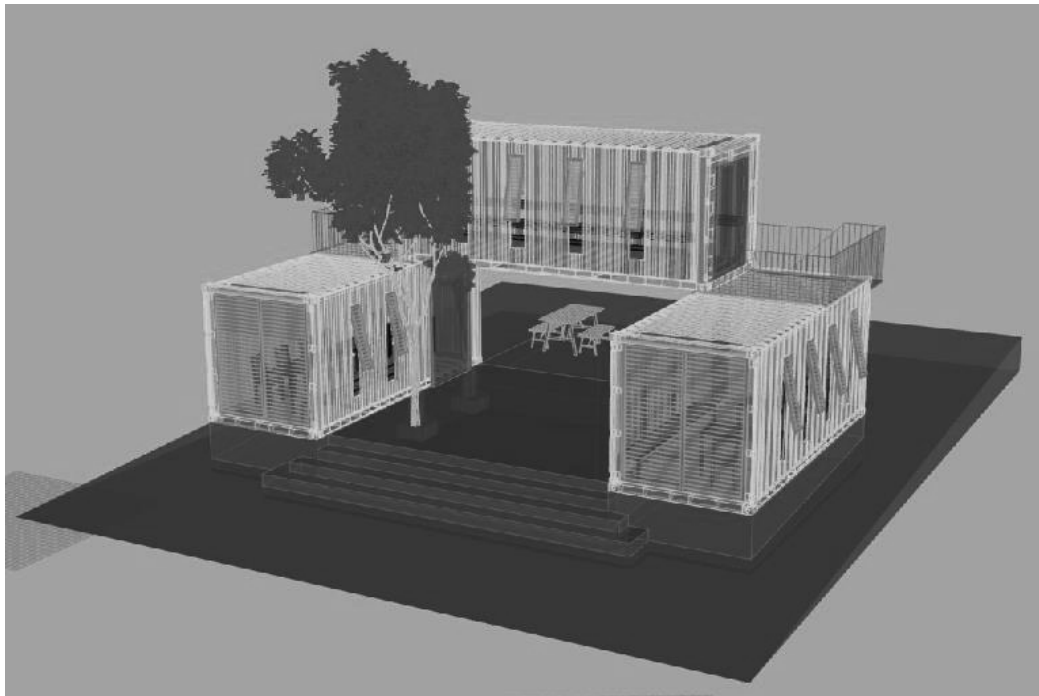
What arrived on Dr. Eustache's property, however, were not pre-fabricated buildings designed for human occupation. They were shipping containers, huge metal boxes designed for storage and travel across long distances on cargo ships or trains. They had thick, rusted metal sides, bottoms and tops, with enormous doors at each end, but no holes for windows, no insulation, and no wiring or holes for electrical outlets. As is, they would be ovens in the Haitian heat. They were also narrower than the anticipated pre-fabricated structures, offering about eight feet from side to side for meeting and teaching purposes.

Within days of receiving the news of the change and pictures of the containers, Mr. Zook circulated new renderings, ones that provided for two of the containers to serve as offices and the third, in a "tree house"³³ configuration perched on the other two, to serve as a computer learning

³² Of these, the clinic is lucky to have had many supporters.

³³ Description by architect Tom Zook.

center for the community and conference room for the clinic. One of these renderings of the shipping containers appears below.



GRAALE Clinic Architectural Rendering by Tom Zook and Andrea Leung. Reprinted with permission.

C. Breaking Ground

With the shipping containers waiting in one area of Dr. Eustache's property, the final decision about the precise placement of the clinic within the confines of the property remained. A group of clinic supporters gathered in Jérémie on March 13, 2014, to examine the containers and choose from two possible locations in close proximity to each other on Dr. Eustache's land. The first was a shaded copse that seemed a refuge from the late-morning sun. The second, a bit farther uphill, had somehow become a site for trash burning, and was quickly eliminated by the group. Mr. Zook was among the members of the group that morning in March and assured everyone that all the full-grown trees in the shaded space could be incorporated into the design. Only a sapling might need removal or relocation.³⁴

New renderings and a site location served as necessary, but not sufficient, conditions for construction. To translate site selection and design into groundbreaking, the project needed an engineer familiar with local land and building conditions. Within days of the gathering of the

³⁴ Subsequently, the need to use a forklift to mount the containers onto the new foundation would circumscribe the ability to preserve all the trees.

group on the selected site, a local Haitian engineer was engaged and developed plans for the initial excavation and concrete foundation for the two containers that would rest on the ground, as well as a plan for the third to straddle its brethren to create the tree house configuration. Construction would focus on drawing from the local labor pool and on sustainable, locally-sourced materials for the foundation. Then, in March, the workers broke ground. After years of planning, but within days of selecting the final site, excavation for the clinic's home had begun.

Work on the reinforced concrete foundation for the shipping containers consumed many months. It needed to be earthquake and storm resistant, given the fierce seismic and meteorological challenges of Haiti. Finally, the foundation was complete. However, moving the enormous and weighty metal boxes that were to house the clinic from their location on one side of the property onto the foundation on the other side of the property would require a forklift and further coordination with the UN. Again, months of correspondence and phone exchanges were involved in coordinating the arrival of the proper lifting machinery. In February of 2016, the forklift arrived. The two containers that were to rest on the foundation on surface level were hoisted into place. But due to a misunderstanding about the blueprint, the portion of the foundation that was to support the tree house container was not of the correct dimensions. An on-the-spot adjustment was made to place the third container on the surface level, forming the bottom of the "U," and not to try to elevate it to straddle the other two containers. Progress had certainly been made in the domain of constructing the clinic, but the shipping containers still needed to be transformed into usable workspaces before students or clients could use the site.

As the delays mounted, in June of 2016, clinic supporters began to wonder if an initial launch in a temporary location might expedite the official opening of the clinic. With a renewed offer by the Haitian Health Foundation (HHF) to use the space above the mill in downtown Jérémie, the co-authors visited the mill to reassess the noise concerns that had previously excluded the space. We arrived while the mill operator was on duty and proceeded up the stairs to the small apartments above. The operator flipped the switch, and the mill machine recommenced its task of grinding grain. In the apartment directly above the machine, the noise was quite loud. In the other, located a bit offset from above the machine, the noise was apparent, but not incapacitating. Moreover, the mill operates weekdays only, from 8:00 a.m. to 3:00 p.m. In addition, HHF offered to renovate the apartments at no cost to the clinic. With the prospect of free rent and no out-of-pocket costs, along with a recognition that the noise was tolerable, we consulted with Dean Eustache and chose the mill apartments to become the initial launch site for the clinic.

Then, in October of 2016, Hurricane Matthew made landfall. In the days following the storm, the New York Times reported, "[i]n Jérémie, the capital of the southern department of Grande Anse, there was near-total destruction."³⁵ In the initial aftermath, the focus in Jérémie has been, of course, on basic necessities – food, water, medical care, and rebuilding homes. Both clinic destinations suffered damage. The category-four hurricane blew a shipping container over onto its side, a situation that will be very difficult to rectify, now that the UN no longer maintains the operations it previously had near the site. Accordingly, finding the donated services of a forklift with appropriate lifting capacity may be quite challenging in the upcoming months. The apartments above the mill also suffered some damage, but the damage there should be reparable, given the available equipment and donated resources. Nonetheless, in light of the urgent humanitarian crisis, repairing and refurbishing them is taking additional time. We still anticipate

³⁵ Azam Ahmed, *Hurricane Matthew Makes Old Problems Worse for Haitians*, N.Y. TIMES (Oct. 6, 2016), http://www.nytimes.com/2016/10/07/world/americas/hurricane-matthew-haiti.html?_r=0 [https://perma.cc/2YQB-DARA].

beginning the initial launch of the clinic from one of the mill apartments, but Hurricane Matthew has compounded the delays.³⁶ Revised estimates suggest a launch in the 2017-2018 timeframe.

D. Funding and Fundraising

The earliest chapters of the clinic relied on volunteer participation. Conceiving of the clinic, imagining its goals and basic outline, planning for a physical location, persuading the UN to donate structures, having free renderings created, and meeting and consulting about myriad dimensions of planning all involved either no or only minimal out-of-pocket expenses for the clinic.³⁷ Most of the non-Haitians partnering with ESCDROJ and consulting on the clinic were or are academics who have support from their home institutions for their research and/or relevant public service work, and therefore no fees were incurred to the clinic for their collaboration. Dr. Eustache, Ms. Paul, and Ms. Edmond-Dimanche have all volunteered their time and energies, and Dr. Eustache his land. But construction workers and materials suppliers did not work on credit. Funds needed to be available to pay for labor and materials.

The need for funds and a bank account in which to store them, assuming the clinic received some, was anticipated. The co-founders and staff at ESCDROJ had researched the protocols and secured the opening of a bank account for the clinic in Haiti. Clinic supporters had been seeking financial support from a variety of sources over the years, including efforts to obtain grant funding and donations.³⁸ But fundraising is often a slow process, especially when the clinic exists primarily as a vision, and there is no visible, concrete reality. It was only in the months before the breaking of ground that donations began to accumulate.³⁹ The advent of the ability to make a tax-deductible donation from the U.S. almost certainly jump-started the process.⁴⁰ But much work remains to be done.

In addition to the equivalent of thousands of U.S. dollars to pay for the retrofitting of the shipping containers, funds will be needed to operate the clinic at both the temporary apartment location and in any longer-term homes. At some point, funding will be needed to pay for supervisory services, whether that funding comes through ESCDROJ itself or from separate sources. Moreover, running a clinic with multiple clients suggests a need for administrative support. Volunteers could provide support, but the twin expedients of continuity and maintaining

³⁶ More recently, in January of 2017, in the wake of the arrest and subsequent removal to the U.S. of Grand'Anse Department Senator-elect Guy Philippe, protests erupted in Jérémie. *Haiti's Philippe dropped his guard before his capture by U.S. agents*, MIAMI HERALD (Jan. 6, 2017), <http://www.miamiherald.com/news/nation-world/world/americas/haiti/article124971364.html> [https://perma.cc/GK4H-EFLV]. Reports that the protests involve violence, anti-U.S. sentiment, and roadblocks are likely to exacerbate the challenges of coordinating the launch of the clinic. *Haiti-FLASH- Violent Reprisals of Guy Philippe's Supporters*, HAITI LIBRE (Jan. 10, 2017), <http://www.haitilibre.com/en/news-19757-haiti-flash-violent-reprisals-of-guy-philippe-s-supporters.html> [https://perma.cc/VS7K-AA4N]; Joseph Guyler Delva, *U.S. citizens targeted after extradition of Haiti ex-coup leader*, REUTERS (Jan. 10, 2017), <http://mobile.reuters.com/article/idUSKBN14U09A> [https://perma.cc/RGN4-PEWL].

³⁷ With perhaps the notable exception of some travel expenses. However, travel expenses were often self-funded or reimbursable by the academic institutions with which the non-Haitian partners were associated.

³⁸ "Funding is one of the issues that clinical educators confront throughout the world. Although the international trend is to rely increasingly on stable, hard-money sources of funding (like tuition), nearly all clinics began by raising 'soft money' from foundations or similar sources." Chavkin, *supra* note 10, at 15.

³⁹ Generous support, including both funds and books in French, has come from, *inter alia*, faculty, alumni, and students involved in partner relationships with ESCDROJ.

⁴⁰ Professor Sandy Ogilvy of Catholic University of America's law school has played a pivotal role in coordinating the donations for GRAALE.

confidentiality highlight the value of remunerated staff for running the day-to-day and week-to-week logistics of the clinic, if possible. To assist Dr. Eustache, the law school itself has just one paid primary administrative staff position. Separate from the staffing, depending on the site, the clinic will need to cover basic operational costs, like electricity (from a generator that would need to be purchased along with fuel to run it, or from solar panels), paper, a printer, ink, and other basic supplies, and transportation to court, the prison, and to visit other clients and witnesses for those unable to travel to the clinic.

Set among the limited resources countrywide, the GRAALE clinic faces substantial resource challenges. It will certainly not, however, be the first legal aid clinic to face such challenges.⁴¹ The scholarly literature is replete with examples and descriptions of clinics undertaken despite limited resources. For example, with respect to the Legal Aid Clinic at the University of Namibia, apparently the first law school clinic in that country, Professor Dausab explains that three clinical faculty members supervised seventy law students.⁴² She notes that “[y]ou could not call a client because we did not have airtime for the phones. You could not travel for consultations because there was no transportation budgetFalse In addition to limited resources for the Clinic, we faced our own limitations as extra work did not translate into extra pay.”⁴³

Similar financial constraints confront GRAALE. Apart, perhaps, from Dean Eustache, who also has other demanding professional responsibilities, ESCDROJ itself does not generally have full-time faculty members. Short-term funding for phone minutes and some transportation (via moped taxis) has been entered into the proposed clinic budget, although pragmatic considerations suggest the need for a four-wheel drive vehicle for transportation of clients and students. The clinic is the beneficiary of several refurbished laptops, although provision for electricity at the longer-term site to run the computers has not yet been arranged, and Hurricane Matthew’s drenching may have rendered some of those computers no longer operational. These limitations and needs exemplify additional financial challenges in the clinic launch.

The clinic’s focus will be on providing free legal services to indigent individuals in the three practice areas discussed. But at some point, there may also be the prospect of representing paying clients to defray clinic costs and permit the clinic to become financially self-sustaining. The normative inquiry of whether, over time, the clinic should accept paying clients, assuming there are clients willing and able to pay for the clinic’s legal services, is a challenging one and raises a number of corresponding questions. For instance, how would the clinic ensure adequate focus on non-fee paying clients? How would the clinic decide what portion of its caseload to

⁴¹ Consider the following description of the finances of a law school clinic in Russia:

Other clinics operate on a shoestring. Ufa, for example, is the home of Bashkir State University, several hundred miles east of Moscow. Naturally, it has a law faculty. Remarkably, it has a clinic. A hand-lettered sign marks the door to the room in which the clinic is housed. Inside are some student desks and chairs. And that is it. The clinic has no computer, no printer, no copier, no filing cabinet, not even a telephone (students make necessary calls from their homes). Although students receive credit for the time they spend doing clinic work, the three women who supervise the clinic receive nothing. They each have a regular teaching load of eight to ten hours per week. The clinic is extra work for which they receive nothing. And why should they? Each receives a salary of twenty dollars a month (upon hearing this, I thought I must be mistaken, so I asked the translator if I had understood it correctly. I had, she said.) To make ends meet, faculty members moonlight (although many things are cheaper in Russia, twenty dollars per month is far less than enough to survive).

Burman, *supra* note 10, at 114-15.

⁴² Dausab, *supra* note 10, at 10-11.

⁴³ *Id.*

reserve? How would accepting fee-paying clients affect the clinic's mission? Would fee-paying clients be limited to the three original categories of practice (pre-trial detainees, victims of sexual assault, and individuals in need of mediation)? If not, how would the practice domains be determined? Although the overarching question regarding reserving a portion of the clinic caseload for paying clients is analyzed in somewhat greater detail below,⁴⁴ the ultimate decision remains for future consideration.

In terms of immediate funding, more experienced fundraisers advised offering naming opportunities for the various physical components of the GRAALE site as well as more general name recognition of donors on a funders' plaque to be affixed to the clinic building.⁴⁵ This approach has indeed produced funding commitments, although not, as of this time, an adequate supply. Previous efforts to secure grants did not, unfortunately, result in funding. Fundraising generally, along with the specific question of accepting paying clients, are two of many junctures where further advice from those in the clinical education field would be most welcome.⁴⁶

III. THE NEXT CHAPTERS: OPPORTUNITIES FOR PROBLEM SOLVING IN THE IMPLEMENTATION AND LAUNCH

With repairs to the initial launch site above the mill within anticipated resources, the next chapters need drafting. They include, but are not limited to, clarifying the clinic's goals, decisions on ethical frameworks, curricular support, staffing, student selection, budget, and pragmatic running-the-clinic logistics, as well as reflection and re-evaluation.⁴⁷ Finally, as part of this "next chapters" view, we acknowledge and analyze additional potential risks or drawbacks in the creation of GRAALE.

A. Clarifying Goals

Although the overarching aims of the clinic, client service and law-student experiential training,⁴⁸ have been established, many of the choices for how to implement those aims and what

⁴⁴ Additional concerns about accepting fee-paying clients are explored *infra* in text accompanying note 78.

⁴⁵ One gift, made anonymously in the amount of \$5,000, for example, was to name the entry stairway in honor of Pope Francis.

⁴⁶ Professor Wilson provides a useful overview of organizations and sources that have provided funding to support the launch of clinics internationally. Wilson, *Training for Justice*, *supra* note 10, at 424-27. The scholarly literature also contains reports of specific approaches that have met with funding success. According to one such report, a clinical teacher at Samara State University in Russia "developed a mechanism to address a major challenge of fledgling clinics, generating resources to support themselves, by working out with the university a separate tuition payment for a fourteen-month clinical education program commenced by an intense 150-hour training program in the first two months and followed by 380 hours of practice in the next twelve months." Wortham, *supra* note 10, at 628 (footnote omitted). Dean Maisel also describes a range of successful fundraising approaches for law school clinics in South Africa. Maisel, *supra* note 10, at 388-98.

⁴⁷ Professor Schrag's article describing the issues involved in creating a clinic proved very helpful, especially in alerting or reminding us of a number of categories or topics that should be addressed in designing a clinic. See generally Schrag, *supra* note 11.

⁴⁸ These two goals represent a mainstay of clinical education globally. See, e.g., David McQuoid-Mason, Ernest Ojukwu, and George Mukundi Wachira, *Clinical Legal Education in Africa: Legal Education and Community Service*, 23 in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE (2011) ("In most African countries, university law clinics were established to serve live clients with two purposes in mind: to provide legal services and access to justice, and to teach law students practical skills.").

to prioritize as they conflict remain to be decided. In light of the clinic's origins as a legal aid center representing indigent individuals, many involved in the project hope to nurture a public interest sensibility in those who participate in the clinic. In a country where there is little tradition of public interest lawyering, this aim may prove of particular importance.⁴⁹ Beyond these pre-existing aims, the clinic may discover that students have separate or additional goals that could effectively be incorporated into the clinic experience.

B. *Ethical Frameworks*

Informed commentators lament the vulnerability of the rule of law in the Haitian justice system.⁵⁰ Among other factors, corruption can undermine this rule.⁵¹ We have written elsewhere that reinforcement of the rule of law may depend, at least in part, on encouraging a commitment to and creating an environment conducive to exercising professional ethical integrity.⁵² One of the primordial goals of GRAALE involves not only serving the local population, but also serving as a formative experience for students in supporting the rule of law and developing that commitment to and environment for ethical legal practice.⁵³

Believing in the importance of ethical practice and dedication to implementing such practice are necessary, but not sufficient, ingredients for making ethical practice the backbone of the clinic. Solidifying that backbone requires tools and support. These may be of particular significance in Haiti because of the challenges the justice system faces. Moreover, one tool that may bear some of the weight of providing guidance in the ethical realm is lacking in Haiti – an

⁴⁹ In contrast, for example, reporting about the legal system in Chile, Professor Wilson opines: “Chile is one of the rare countries in the South that has well-developed information on the poor, as well as a relatively comprehensive program of legal services for them[.]” Wilson, *Three Law School Clinics in Chile*, *supra* note 10, at 521. This includes, among other services, a “national public defender program.” *Id.* at 528. Moreover, Professor Wilson notes that “experts on legal education in Chile suggest that a majority of law schools, including newer private schools in remote cities, have some clinical component in their curricula, although some clinical programs, like many of the law schools themselves, are just getting underway.” *Id.* at 536 (footnote omitted). Some public interest lawyering also exists in Haiti. For example, the Bureau des Avocats Internationaux, along with its partner organization, the Institute for Justice and Democracy in Haiti, provides public interest legal services. See *Building Stability and Prosperity in Haiti Through Justice*, BUREAU DES AVOCATS INTERNATIONAUX & INSTITUTE FOR JUSTICE AND DEMOCRACY IN HAITI (2013), <http://www.ijdh.org/> [<https://perma.cc/254T-XPXX>].

⁵⁰ U.S. Department of State Country Reports on Human Rights Practices for 2015: Haiti, U.S. DEPARTMENT OF STATE (2015), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dld=253021> [<https://perma.cc/KNX9-NJLS>] (“The most serious impediments to human rights involved... insufficient respect for the rule of law, exacerbated by a deficient judicial system; and chronic corruption in all branches of government.”); Dr. Jomanas Eustache, *Reflections on Ethical Integrity: Challenges to the Rule of Law Facing the Haitian Legal Profession*, 39 HASTINGS INT’L & COMP. L. REV. 137, 141-43 (2016).

⁵¹ U.S. DEPARTMENT OF STATE, *supra* note 50; Eustache, *supra* note 50, at 141-43.

⁵² See generally Bloch & Edmond-Dimanche, *supra* note 28, at 9-35.

⁵³ *Id.* at 33-35. For a discussion of the importance of legal ethics education for clinics around the globe, see, e.g., Margaret (Peggy) Maisel, *Setting an Agenda for the Global Clinical Movement in THE GLOBAL CLINICAL MOVEMENT* 335, 346 (2011) (“One of the key challenges to socially responsible law practice identified by clinical educators around the world is corruption in legal systems by prosecutors, judges, magistrates.... The global clinical movement agenda needs to focus attention on ending all such corruption in order to create a just and impartial legal system worldwide. One key strategy for achieving this goal is to ensure that legal education includes significant course work that teaches ethical behavior, allows for discussions of values, and actually confronts and resolves ethical issues in clinical practice on real cases.”).

official governmental code of legal ethics.⁵⁴ There are laws and decrees that govern the regulatory administration and structure of the legal profession and contain a limited number of provisions on lawyers' ethics,⁵⁵ but an official governmental code of legal ethics that provides reasonably comprehensive guidelines or rules for legal practice does not currently exist in Haiti.⁵⁶ In contrast, the Federation of Bar Associations in Haiti, a voluntary association of local bar associations, developed a deontological code for its members, which may prove highly valuable in this enterprise.⁵⁷ In addition, on March 6, 2015, the general assembly of the Port-au-Prince Bar adopted the Federation's code.⁵⁸ The Port-au-Prince Bar has a substantial enrollment of attorneys, and this adoption is a crucial development. However, because the code is not an officially promulgated regulation, statute, or decree, it does not have the force of law and does not necessarily apply to those attorneys who are not members of the adopting bar associations.

Haiti is also struggling to address issues of judicial responsibility and discipline.⁵⁹ In July of 2013, the government established a High Council of the Judiciary to promote reform within and for the judicial branch.⁶⁰ As a result of the challenges within the justice system, instilling ethical practice as a fundamental approach of the clinic will require thoughtful attention.

In addition to the larger issues of cultivating ethical practice, part of developing an organizational ethical consciousness will involve implementing an effective conflicts check and confidentiality procedures. While we anticipate that the clinic will have access to several individual repurposed laptop computers, an appropriate protocol to engage in conflicts checks and keep documents and files confidential will need to be implemented. Guidance and the experience of other clinics on such protocols, particularly in environments with very scarce resources and limited and sometimes unreliable electricity, would also be most welcome.

C. Curricular Support and the Clinic's Role

Success of the clinic will likely depend upon incorporating some of the building blocks for student clinical practice into the law school curriculum. These foundational elements might include introduction to legal ethics, trial skills, client interviewing and counseling or other components of relevance to Haitian legal practice. Offering meaningful opportunities for professional competency training often demands an influx of resources. How and when will such training be offered? Who will provide the sessions? Will such opportunities be made available

⁵⁴ Bloch & Edmond-Dimanche, *supra* note 28, at 9-13.

⁵⁵ See generally Jean-Claude Duvalier, *Décret du 29 mars 1979 Règlementant la Profession d'Avocat*, BARREAU DE PORT-AU-PRINCE, <http://barreaudeportauprince.ht/documents/Decret%20du%2029%20Mars%20Rglementant%20la%20Profession%20Avocat.pdf> [https://perma.cc/99UL-X4DR].

⁵⁶ See Bloch & Edmond-Dimanche, *supra* note 28, at 9-13.

⁵⁷ FÉDÉRATION DES BARREAUX D'HAÏTI, FBH, CODE DE DÉONTOLOGIE DE LA PROFESSION D'AVOCAT, Adopté par le Conseil D'Administration (2002) (copy on file with the co-authors). This deontological code for lawyers that was adopted by the Federation of Bar Associations of Haiti is intended to govern members of the local bar associations that have joined the Federation. However, whether a bar association joins the Federation is a choice, and it is not clear if the Federation's code is in wide enough circulation such that lawyers generally are well versed in its provisions.

⁵⁸ See Kate E. Bloch, *Bridging Rule of Law Theory and Implementation: The Role of Professional Ethical Integrity*, 37 HASTINGS INT'L & COMP. L. REV. 81, 88 (2016).

⁵⁹ See U.S. DEPARTMENT OF STATE, *supra* note 4.

⁶⁰ *Annual Report 2013: The State of the World's Human Rights, Haiti*, AMNESTY INTERNATIONAL 116 (2013), http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf [https://perma.cc/WH2J-Z3WC].

generally for the students at the law school or available only for students participating in the clinic?

Recent discussions and brainstorming with Dean Eustache are providing at least initial answers. Dean Eustache has already indicated his fundamental support for incorporating ethics training into the law school curriculum, but there are structural impediments, including resource limitations.⁶¹ In some years, the law school has been able to engage the services of a visiting faculty member to teach an introductory legal ethics course. In coordination with Dean Eustache, we will be working to try to help the school hire a faculty member in order to have this component of the curriculum offered regularly and to have the course focus not just on theory but also on the ethical challenges that arise in legal practice. The credits from this course would count towards the law school graduation requirement, and clinic students may be offered preferential enrollment. Because law school instruction in Haiti is primarily a lecture-based enterprise, helping students bridge the gap between law school classes and legal practice is challenging. With Dean Eustache, we plan to develop a job description to hire a visiting faculty member who would offer instruction in a criminal procedure class with practical exercises or a practice skills class that involves training in trial preparation or advocacy, to prepare ESCDROJ students for the clinic and practice. The credits from this course would also count towards graduation, and clinic students may also be offered preferential enrollment. Ideally, both courses would be tailored to prepare students for the types of cases they would work on in the clinic. In addition, the clinic itself should furnish tailored training beyond what would be provided by the legal ethics and trial advocacy/criminal procedure courses.⁶²

Questions that remain to be resolved include: What type of academic credit will students earn for their participation in the clinic itself? What requirements, if any, will it fulfill? What specific curricula will the clinic offer? What type of assessments will the clinic faculty use to evaluate student performance in the clinic? How will the clinic fit more generally into a student's law school and legal training experience?

Although clinical experience does not currently play a meaningful role in Haitian law school education, as noted above, the legal training system in Haiti does require that law school graduates participate in an apprenticeship, also known as a *stage*, of one to two years before admission to the Bar. Before the apprenticeship, however, law school graduates must complete a substantial piece of writing, known as a *mémoire*, and succeed in defending that *mémoire* before a reviewing committee. Because the *mémoire* is not a formal part of the candidate's law school experience, or included in the tuition and fees, there is often limited support and mentoring for students to complete their *mémoires*. As a result, in Jérémie, only a few law school graduates complete a *mémoire*.⁶³ Thus, many students never arrive at the apprenticeship. Even if they do, it

⁶¹ Eustache, *supra* note 50, at 145.

⁶² As explained by Professor Patricia Goedde, before engaging in the representation of clients, starting a law school clinic at Sungkyunkwan Law School in Seoul, South Korea, involved dedicating its initial semester(s) to developing a clinic manual and other foundational groundwork. Goedde, *supra* note 10, at 367 (2014) ("Five students enrolled in the Clinic in 2011, four second-year students and one third-year student, all of whom had excellent English ability and an eagerness to commit to the course. As stakeholders in the Clinic, the group consensus was to focus on (1) training, (2) drafting a clinic manual, and (3) COI [country-of-origin] research and writing."). This approach to developing training and a clinic manual with students as the focus of the initial semesters in the clinic is an appealing one, as a clinic manual and training are likely to prove essential to the GRAALE clinic. But it is unlikely that GRAALE will have the resources available to invest its first semesters in developing the initial clinic manual and training materials with students. However, as revising whatever materials are initially developed will undoubtedly be part of a functioning clinic, we do anticipate student engagement in those revision processes.

⁶³ For example, Troy Elder, who has been a dedicated believer and tireless supporter of the clinic efforts,

is the student's responsibility to coordinate the *stage*. This entails persuading a practicing attorney or government office to apprentice the graduate for one to two years. The infusion of clinical opportunities into the law school curriculum would better prepare students to persuade future *stage* mentors to engage them, not to mention furnishing substantive practice experience to enhance the students' understanding of the lawyer's role and professional competencies. In addition, clinical education often exceeds the training of students in practical skills and substantive doctrine. As a clinician who has worked with a variety of partners to launch clinics around the world comments, "[t]hose who have worked with clinical legal education over time have discovered that it is more than training in litigation skills, that it is more than a method, and that it is more closely related than much of the rest of legal education to the bar's professed interest in access to justice and stabilization of the rule of law."⁶⁴ Whether a particular *stage* will focus on access and rule of law concerns will likely vary substantially. However, GRAALE will focus on rule of law, human rights, and access concerns. Thus, clinical experience may be of particular importance and value to aspiring lawyers in a country struggling with rule of law, access to justice, and human rights challenges.

D. *Staffing and Caseload*

The "how" of a successful clinic will depend not just on a well-designed transformation of the shipping containers into functional office space and/or the refurbishing of the apartments over the mill as a temporary launch site, but also, *inter alia*, on the ability to staff the clinic with educators and supervisors who will effectively guide the students in conducting the representation and mediations. Dean Eustache will have a fundamental role in overseeing the instruction in the clinic and the relationship between the clinic and the law school, as well as in adjusting the law school curriculum to support the clinic. Ms. Edmond-Dimanche and Ms. Paul, two ESCDROJ graduates, have volunteered their time to direct, teach, and staff the clinic. Practicing lawyers

explains endeavors he coordinated to assist ESCDROJ graduates to complete the *mémoire* requirement:

Here again, the *mémoire* requirement will likely continue to pose challenges in identifying, training, and supporting attorney supervisors. One such effort launched in 2012 sought to mentor five recent ESCDROJ graduates who held promise to serve as 'clinical fellows' upon completion [of] their *mémoire* and stage requirements. The program paired the graduates with law faculty based in the United States and France who provided access to research materials not available in Jérémie or elsewhere in Haiti, as well as with periodic check-ins and other support during the drafting process. In addition, in a departure from usual Haitian practice, Dean Eustache authorized non-Haitian law faculty to serve as pro bono *mémoire* advisers for this initial group. Finally, outside funding for travel related to this work was secured from the Florida Association for Volunteer Action in the Caribbean and the Americas, Inc. (FAVACA), a private not-for-profit organization that supports volunteers providing technical expertise to Latin America and the Caribbean. Despite these efforts, however, the program did not provide the desired results: after nearly five years, none of the five candidates has, to date, completed or defended his or her *mémoire*. Although the reasons for this vary by individual, a common, understandable, and likely dispositive factor was that all of the candidates have held full-time jobs and/or have had significant family responsibilities during the *mémoire* process; these compromised the graduates' ability to devote the necessary sustained attention to research and writing. Moving forward, the clinic may seek to mitigate this factor by providing writing stipends, a practice that has met with success at the BAI [Bureau des Avocats Internationaux]. See [*infra* note 69], and accompanying text.

Email from Troy Elder to Kate Bloch, Dec. 21, 2016, on file with co-authors.

⁶⁴ Wilson, *Training for Justice*, *supra* note 10, at 431.

associated with the local bar, including perhaps the president of the local bar, might also be involved in student supervision. Training for staff, particularly as staffing evolves over time, as well as clinic materials and guidelines will need to be developed.

Some decisions about case selection have been made. The local court has indicated its willingness to assign the clinic responsibility for representation for some number of pre-trial detainees in the local prison. The appropriate caseload for the clinic remains to be determined. In this context, decision makers will likely face the difficult dissonance that often arises between the need for the clinic's services and the time demands of meaningful learning for students. After all, we know even before it launches that demand will far exceed supply.⁶⁵ A fair, pragmatic, and educationally sound method for walk-in and referral client intake as well as for internal student case assignments should also be established.⁶⁶ In addition, ESCDROJ concludes its academic year in June and does not recommence until October. The needs of the clinic's clients, however, are unlikely to accommodate neatly to the academic calendar.⁶⁷ Consequently, the role of students and summer staffing generally will need to be considered.

E. *Student Recruitment and Selection*

GRAALE will need to decide how to recruit students and whether to institute a selection process for students.⁶⁸ The merits and potential drawbacks of an application process deserve exploration. The clinic should consider the extent and type of commitment expected of enrolled students. Particular challenges in terms of expected commitments may inhere in a law school in which classes normally meet at night (and students often have daytime employment) and where the courts are open during the day. These circumstances, in conjunction with the financial constraints on students, may raise additional considerations. For example, assuming the clinic could raise the funds, is it appropriate to consider furnishing students a small stipend to offset costs for students who may need to miss paid employment to attend to client needs? What impact might such stipends have on the clinic and student learning?⁶⁹ Ultimately, once the issues related

⁶⁵ Consider the situation in South Africa as described by Dean Maisel: "All legal clinics which provide free representation to indigent persons face serious caseload pressures, but those are greatly magnified in developing countries, such as South Africa, where a majority of the population lives in poverty." Maisel, *supra* note 10, at 414-15. More generally, Professor Wilson explains that he believes "the service-education tension is the single greatest factor contributing to whatever shortcomings exist in clinical legal education in developing and transitional parts of the world." Wilson, *Training for Justice*, *supra* note 10, at 424.

⁶⁶ In an ideal world, for cases that the clinic cannot accept, there would be a referral system to local attorneys who might accept the case. But, given the resource constraints, such a referral system may not be practical.

⁶⁷ Criminal trials (assises) in Jérémie generally take place once or twice annually during a court session of approximately two weeks.

⁶⁸ For a discussion of issues related to student recruitment and participation, see e.g., Mahasneh & Thomas, *supra* note 10, at 32-33.

⁶⁹ The Bureau des Avocats Internationaux (BAI) offers a program that supports graduates writing their mémoires (finissants) and stagiaires. As the BAI/IJDH (Institute for Justice and Democracy) website explains:

The finissants receive formal and informal instruction on research methodology, writing, and legal skills, while preparing their mémoires and assisting with BAI cases. All are mentored by BAI senior attorneys and receive hands on training in social justice lawyering through day to day work on BAI legal cases. Stagiaires develop their legal skills through supervised work on BAI human rights cases and participation [in] weekly training sessions. The apprentice duration is typically two years.

Lawyer Training, BUREAU DES AVOCATS INTERNATIONAUX & INSTITUTE FOR JUSTICE & DEMOCRACY IN HAITI (2014), <http://www.ijdh.org/bai-lawyer-training/> [<https://perma.cc/XYG9-DTU8>]. Just for comparison purposes, prior to 2016, in

to the mutual obligations of students and the clinic are resolved, a student-clinic contract may prove helpful in clarifying obligations and privileges for those who participate in the clinic.

F. *Clinic as a Venue to Complete the Required Stage*

Finding a law firm or government office willing and well-resourced enough to host an apprentice (stagiaire) can be challenging for a law school graduate.⁷⁰ With appropriate support and approval, the clinic could serve as the venue for this required apprenticeship experience. If the Doyen (chief administrative judge) and the Bâtonnier (president of the local bar) approve the site as an apprenticeship option, then the clinic could also help law students overcome the financial and other barriers to completing this necessary element for entry into the practice of law.

G. *Budget*

Financial considerations have and will continue to play a significant role in decisions about the clinic. It may be easier to raise funds for initial “brick and mortar” construction and more challenging to find funds for on-going operations of a clinic program. In addition to fundraising ideas, we encourage clinicians to pass along thoughts about expenses and costs that we might not anticipate (and ways of funding or mitigating those costs, if possible). For example, the law school is located in downtown Jérémie and, unlike the mill apartments, the longer-term clinic buildings rest on a site accessed by a sometimes difficult to navigate dirt road about four miles out of town, a journey that, in good weather in a four-wheel drive vehicle, regularly consumes 20-30 minutes. Consequently, the purchase of four-wheel drive transportation may be appropriate to enable students, clients, and witnesses to access the clinic office or for students to visit individuals offsite.

the U.S., an interpretation of American Bar Association Rule 305 prohibited students from earning both credit and pay for work in an externship: “A law school may not grant credit to a student for participation in a field placement program for which the student receives compensation.”

Section on Legal Education and Admissions to the Bar Report to the House of Delegates, Resolution, AMERICAN BAR ASSOCIATION 5 (Aug. 2016), <http://www.americanbar.org/content/dam/aba/images/abanews/2016%20Annual%20Resolutions/100.pdf> [https://perma.cc/4F2B-CSJJ] (strikeout notation deleted). However, in August of 2016, the ABA eliminated Interpretation 305-2, thus allowing students to receive both credit and compensation for their participation in a field placement program. *Id.* GRAALE is designed to operate as an in-house clinic rather than a field placement program. In Haiti, those writing their mémoires and those engaged in the apprenticeship are law school graduates rather than current students.

⁷⁰ The difficulty of finding a venue for a post-graduate apprenticeship in law prior to becoming a lawyer is not unique to Haiti. See e.g., Baker, *supra* note 10, at 150; Maisel, *supra* note 10, at 376 (reporting that “[i]n the past, it was often difficult for disadvantaged law school graduates to meet [the legal apprenticeship requirement] because they would be overlooked for positions in favor of those from more affluent classes. This situation was exacerbated in South Africa and elsewhere when issues of race and cultural background were added to the equation. Thus, many black law graduates never were able to gain formal admission to the bar. The expanded law school clinical program has helped to partially remedy that problem by providing increased opportunities for students from disadvantaged backgrounds to fulfill their apprenticeship requirement.”) (footnotes omitted). Having a clinic serve as an apprenticeship venue appears to have provided a valuable option in South Africa. Baker, *supra* note 10, at 154; Maisel, *supra* note 10, at 376, 414.

H. *Day-to Day Logistics*

All of the topics of the above sections, from building to fundraising to curricular support to developing an ethics framework, embody important threshold components of a law school clinic. Managing the day-to-day logistics introduces an extensive set of additional components. Monitoring for the secure storage and the movement of client files (physically and electronically) as well as possible evidence, implementing approval processes for expenditures, tracking student work and responsiveness to client needs, providing adequate supervision and support for student efforts, addressing personnel issues, integrating curricular training into the functioning of the day-to-day reality, dealing with physical plant issues (like excessive heat or lack of electricity), and coordinating transportation for attorneys and clients to the clinic office and offsite commitments stand among a multitude of other responsibilities for the critical functioning of GRAALE.

Although the topics explored in this section on problem solving for the implementation and launch do not pretend to be an exhaustive list, perhaps the greatest service that clinicians with experience in launching clinics around the world can furnish in shepherding this new clinic is to augment our list of challenges with ones that GRAALE is likely to encounter and of which we may not be aware. Constructive advice on how we might approach or resolve these unanticipated challenges would also be appreciated.

I. *Reflection and Re-evaluation*

While stepping back and reflecting on the state of a clinic is valuable as a general matter, it strikes us as of critical importance with respect to a new clinic and one where in-country models are functionally absent. Re-evaluation can occur at informal or formal sessions, and at regular or spontaneous intervals. However, it seems prudent and pragmatic to explicitly build some sessions for reflection into the weekly or monthly calendar of the clinic.

J. *Analyzing Additional Risks in Launching the Clinic*

The clinic embodies both promise and challenge. The promise represents a consistent refrain throughout the discussion above and drives our efforts in its launch. Although we have also already identified above a notable number of challenges to the launch of GRAALE, in this section, we explicitly analyze two additional risks. First, to launch effectively and to survive, the clinic needs to establish credibility with and buy-in by the local bar and bench.⁷¹ For example, even though the clinic's primary emphasis will be on free representation for indigent individuals, it is possible that the local bar might perceive the clinic as a competitive threat.⁷² Second, in its resolution to nurture ethical conduct, in a country where concerns about corruption in the justice system are well documented,⁷³ founders of the clinic have committed to refusing to offer gifts to those involved in the judicial system to advance the progress or result in the clinic's cases.⁷⁴ Put

⁷¹ The need for support from the bench and bar for a law school clinic is certainly not unique to GRAALE. See, e.g., Mahasneh & Thomas, *supra* note 10, at 23.

⁷² Concerns that law school clinics would compete with existing attorneys are also mentioned in other scholarly literature on clinical legal education. See, e.g., Mahasneh & Thomas, *supra* note 10, at 19-20; Wilson, *Western Europe*, *supra* note 10, at 834-35 (offering potential responses to similar concerns about competition with the bar elsewhere).

⁷³ See U.S. DEPARTMENT OF STATE, *supra* notes 4 & 50 and accompanying text.

⁷⁴ We have previously raised this challenge in the context of considering the clinic as a venue for building

more directly, bribing judicial and court officials will not be acceptable conduct for students and attorneys on clinic cases.⁷⁵ This no-gifts policy might also prove to be a formidable challenge for the clinic.

Support for the clinic from the local bar might be achieved in a variety of ways. Faculty members at ESCDROJ are generally members of the bar who teach part time. Drawing upon the experience and wisdom of these faculty members as formal and remunerated supervisors to help oversee cases and student work in the clinic would enable these bar members to have a voice in the training of new attorneys within the clinic. Their direct involvement is likely to produce an intellectual and professional investment in the success of the clinic. Similarly, as discussed above, we hope that the clinic will become a site for graduates to fulfill their required post-law school apprenticeship; ideally, the president of the local bar will be involved in the clinic, at least in evaluating the clinic as a site in which graduates may complete their *stage*, if not in directly supervising students at the clinic. Of course, over time, the goal will be to demonstrate the value of the clinic through the quality of the legal work it does on behalf of clients generally and its anticipated impact on reducing the number of pre-trial detainees without representation in the local prison. Through the process of involving local attorneys, and, we hope, the president of the local bar, we can work to enhance goodwill towards the clinic.⁷⁶

When serving an indigent population who would not otherwise pay for legal services, the clinic is relatively less likely to engender concerns about competition by members of the local bar. Still, in some circumstances, friends or family might have come forth with funds to pay something toward attorneys' fees at the time of trial, even in cases where the individual involved was indigent. In those cases where the clinic supplied free representation, the existence of the clinic would mean that such time-of-trial funds would not be forthcoming to members of the local bar. Although representing indigent clients may indeed raise some competition concerns, given the number of indigent pre-trial detainees in the local prison without any representation (and who may be lacking any prospect of funds to pay legal fees), these concerns seem somewhat attenuated.⁷⁷

In contrast, concerns about the clinic's competing for employment with local attorneys would likely increase if the clinic decided to take paying clients to defray its overall costs. Consequently, to develop credibility and support with the local bar, launching the clinic as a free criminal and social justice legal aid clinic, to the extent that funds permit, seems the wiser course. If the clinic finds that it cannot sustain its efforts by fundraising, and if law school tuition and fees are unavailable to maintain its services, then the clinic will need to consider other funding mechanisms. One option might be to charge for mediation services, which, to the extent that they

ethical practice environments in the face of rule of law vulnerability in Haiti. See Bloch & Edmond-Dimanche, *supra* note 28, at 35-6.

⁷⁵ See *id.*

⁷⁶ Involving local legal stakeholders is an approach endorsed in the clinical legal scholarship. See, e.g., Rosenbaum, *supra* note 10, at 69 ("Form partnerships with practitioners to help in the skills-training and making client contacts... [e]ngage with community-based and professional stakeholders before launching a clinic."); Mahasneh & Thomas, *supra* note 10, at 21.

⁷⁷ While the precise number of inmates housed in the Jérémie Prison varies, a factfinding memorandum based on an interview with the prison warden, which was prepared for submission to BAI, noted that, on March 7, 2012, there were 264 inmates, and, of these, 182 inmates were in pre-trial detention. See Lopez Memorandum, *supra* note 1, at 1-2. It is, of course, possible that increasing confidence in lawyers and the justice system might motivate more families to engage and devote funds to representation of a loved one. This might augment concerns about competition.

are not necessarily available through the local bar, might be viewed as less problematic by local attorneys.

If no other reasonable alternatives render the clinic sustainable, however, then the clinic may need to consider the possibility of taking paying clients. This route involves complexities beyond potential competition with the local bar. These include, as suggested earlier,⁷⁸ maintaining adequate time available for free representation and ensuring that attention to paying clients does not result in ineffective representation for non-paying clients. Related to the approach above, the perception of competition in the realm of paying clients might also be mitigated by having additional local bar members working as part-time faculty supervising students on some of these cases and therefore receiving some remuneration through the clinic. The complexities of accepting paying clients, in addition to the indigent population that the clinic aims to serve, raise a range of challenges that would merit further examination should the clinic need to generate funds through client fees.

With respect to court approval and acceptance, in addition to legal work presented to the court, and the corresponding community service function the clinic is designed to perform,⁷⁹ as the clinic launches, it may be in a position to perform public service that would specifically benefit the justice administration, local counsel, and the educational mission of the clinic. The local court in Jérémie lacks an efficient way to manage the documents it holds. Records are kept in hard copy and are therefore hard to access and track. Ms. Edmond-Dimanche has suggested the possibility that the clinic could create an electronic database of public record court documents. Modest mobile or portable scanners now cost in the range of \$50 to \$75, a sizeable sum in Haiti, but it may be possible to find a donor to fund one for the clinic. With such a scanner, clinic volunteers could create this database of court files. This approach to recordkeeping would preserve records and make them more accessible to those involved in the court and the criminal justice system. This approach does assume that the court will have at least one computer on which the electronic records can be stored and accessed. Performing this scanning service offers multiple benefits. It is certainly useful to the court to have collated and accessible case records. Local counsel (and unrepresented individuals) too could have better access to these records. Moreover, because these are public records, the clinic should be able to keep an electronic copy. As the clinic's mission is both direct-service focused and educationally focused, real cases and simulations based upon them could furnish an unparalleled platform for teaching and learning at the law school and clinic itself. Because verisimilitude of educational exercises to real-world cases is often an essential element of good pedagogy or andragogy, the database could offer a veritable treasure trove of frames, issues, and examples upon which law teachers could base educational exercises for clinic and other law students.

By engaging, and at least modestly remunerating, local practitioners to supervise in the clinic, and by performing quality legal work and public service for the legal community, the clinic hopes to overcome perceptions of its entrance into that community as a competitor and earn the respect of the local bar and bench.

The second risk noted in this section, the clinic's no-gifts policy, might also pose challenges to the success of the clinic's legal work. Concerns about corruption in the judicial

⁷⁸ See *supra* text accompanying note 44.

⁷⁹ As two clinical scholars note, "[o]perating a real-client clinic also provides a law school with the opportunity to make a community service contribution through the provision of legal advice and representation." Jeff Giddings & Jennifer Lyman, *Bridging Different Interests: The Contributions of Clinics to Legal Education in THE GLOBAL CLINICAL MOVEMENT* 297, 299 (2011).

system nationally in Haiti are well documented.⁸⁰ Whether the clinic will face these types of concerns is not clear. If, however, they were to be relevant, the clinic's no-gifts policy might result in cases not advancing at all or proceeding only with extended delays, or perhaps even with rulings that did not accord with the weight of the evidence. This strikes us as a risk the clinic must bear and should disclose to clients. Nonetheless, as we have written in exploring legal ethics issues in Haiti in other scholarship, it is possible to succeed on the merits in legal cases in Haiti, even with a no-bribery policy.⁸¹ The work and success of the Bureau des Avocats Internationaux in Port-au-Prince, a legal office that is widely considered Haiti's preeminent public-interest law firm, and which applies a strict no-bribery policy, provides a model for GRAALE in this regard.⁸² In addition, with an expanded focus on legal ethics in the law school and in Haiti more generally, over time we hope that no-gifts policies will become the expected and de facto norm in the country's justice system.

Jérémie serves as a seat of government and criminal justice administration for the Grand'Anse Department, one of Haiti's ten departments. In Jérémie, as would be true commonly in legal communities around the world, earning respect, credibility, good will, and support for the clinic will be essential.

IV. CONCLUSION

Start-up clinics usually face myriad challenges. The very limited resources generally, the relatively remote location, the limited access to electricity, the endangered state of the rule of law, and the pioneering nature of this clinic in Haiti likely compound the usual start-up clinic challenges. But the enduring nature of the vision of experiential opportunities for law students in Haiti, the generosity of supporters of the clinic in time, money, and intellectual dialogue, and the cruel need of imprisoned detainees and those individuals who have suffered criminal sexual assault fuel the progress of this innovation in the landscape of law school education in Haiti. We welcome your experience and guidance as together we write the next chapters in the history of the first in-house law school social and criminal justice clinic in the country.

⁸⁰ See U.S. DEPARTMENT OF STATE, *supra* notes 4 & 50.

⁸¹ See Bloch & Edmond-Dimanche, *supra* note 28, at 36.

⁸² *Id.*